JAN 26 1952
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IN THE

Supreme Court of the United States

No. 554 OCTOBER TERM, 1951

JOAO FREIRE SINEIRO,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

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JOAO FREIRE SINEIRO prays that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on November 27, 1951.

OPINIONS BELOW

The opinions of the Circuit Court of Appeals are reported in 190 F. 2d 397 and
respectively.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 27, 1951 (R. 31). The jurisdiction of this Court is invoked under 28 U.S.C., §1254.

QUESTION PRESENTED

Whether a statement obtained from the appellant while in custody of the Immigration authorities, without the benefit to him of counsel and without any warning to him that he need not make any statement is in violation of the Fifth Amendment of the Constitution of the United States and inadmissible as evidence against him.

STATUTES INVOLVED

Fifth Amendment of the Constitution of the United States.

U. S. Code, Title 8, §180-a.

STATEMENT

Appellant was arrested on November 20, 1950 upon a warrant of arrest, charged with violation of the United States Code, Title 8, §180-a, in that the appellant had entered the United States without inspection by an Immigrant Inspector. He was arraigned before the United States Commissioner in Philadelphia the same day. In support of the Government's charge, Francis W. Braden, Esquire, of the Immigration and Naturalization Service in Philadelphia, testified from a statement taken from the appellant by an Investigator of the Immigration and Naturalization Service while he was under arrest in deportation proceedings. Preceding the statement given by the appellant was the following language (R. 7a): "Any statement which you might make must be voluntary on your part and may be used in any proceedings the Government may see fit to institute, whether civil or criminal." The appellant was taken into custody on September 12, 1950 and the statement was obtained two days later (R. 13a).

The statement of the appellant was offered in evidence and was objected to, as was the testimony of Mr. Braden based upon said statement on the ground that the appellant was not advised that he need not make any statement at all nor was he advised that he could consult counsel before making any statement. No other testimony was offered by the Government. The objections were overruled and the appellant was held in bail for removal proceedings to Baltimore, Maryland, which subsequently were effected. Thereupon, the appellant filed a motion to quash the warrant of arrest and suppress the use of the statement taken by and before the Investigating Officer of the Immigration and Naturalization Service on the following grounds: (1) That, at the time of the taking of the statement by the Investigating Officer of the Immigration and Naturalization Service, the appellant, although warned that any voluntary statement could be used against him in civil or criminal proceedings, was not advised that he could remain silent and need not make any statement. (2) That the appellant is of Portuguese nationality, with little, if any, knowledge of the English language and did not fully comprehend the nature of his rights under the law. (3) That the appellant was not afforded the right and assistance of counsel at the time of the taking of said statement. (4) That the said statement was introduced as evidence in the hearing before the United States Commissioner in violation of the Fifth Amendment of the Constitution of the United States. After argument, the motion was dismissed by the District Court of the Eastern District of Pennsylvania. The appellant appealed to the Circuit Court of Appeals for the Third Circuit. A motion to dismiss the appeal was filed by the Government on the ground that the order of the District Court was interlocutory in nature and not a final decision. This motion was dismissed by the Court of Appeals in an opinion rendered on July 19, 1951 (R. 21-26).

On October 16, 1951, the order of the District Court was affirmed (R. 28-30). Judgment was entered on November 27, 1951. The affirmance of the order was based by the Court on the authority of *United States vs. Mitchell*, 322 U.S. 65.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the statement obtained from the appellant was freely and voluntarily given or that it was understood by the appellant.
2. In holding that the appellant was adequately apprised of his constitutional rights before the statement was obtained.
3. In failing to hold that the appellant was not advised that he need not make any statement at all and that he could consult counsel before making any statement.
4. In affirming the order of the District Court.

REASONS FOR GRANTING THE WRIT

This is not an isolated case where a statement was improperly obtained by the Immigration authorities from a person detained by them. It is a practice which is followed generally in the Immigration and Naturalization Service (R. 16a) and should be condemned.

The appellant is of Portuguese nationality with little, if any, knowledge of the English language. He had no knowledge, nor did he comprehend the nature of his rights under the law. These facts are not in dispute. The sole question is whether he should have been advised that he need not make any statement at all and that he could consult counsel before making any statement.

The appellant was arrested on an immigration warrant on September 12, 1950. After being held in custody for two days, he was then questioned in connection with his arrival in this country, as to whether he had entered as a stowaway and whether he had entered without inspection. The Immigration Officers wanted to obtain sufficient facts to enable them to apply for a warrant of arrest under Title 8, §180-a, U.S. Code, charging the appellant with entering the United States without inspection by an Immigrant Inspector. Before questioning the appellant, he was informed that "any statement which you might make must be voluntary on your part and may be used in any proceedings the Government may see fit to institute, whether civil or criminal" (R. 13a). He was not advised that he need not make any statement at all, nor was he advised that he could consult with counsel prior to giving any statement. Not knowing the English language, not being advised of the rights which our Constitution grants to all persons in connection with any criminal accusation, being deprived of his liberty for two days and having no opportunity to see friends or counsel, it is not strange that the appellant should succumb to the oppressive surroundings and furnish the Immigration Officers with the information which they were seeking.

In an analogous case, *Petition of F*, 73 F. Supp. 655, the petitioner in his examination for naturalization had extracted from him an admission of adultery. Prior to his examination, the examiner said to the petitioner: "Any statement that you make must be voluntary. Any statement that you make can be used against you. Under these circumstances are you willing to be sworn and to testify?" The Court held that this was insufficient to warn a layman of his constitutional privilege against self-incrimination.

In *Wood v. United States*, 128 F. 2d 265, the defendants were convicted of robbery. Pleas of guilty, allegedly made

at the preliminary hearing in the police court, were admitted in evidence against them. The only question was whether this was proper. The record indicated that the defendants were not asked whether they desired counsel nor were they cautioned or informed concerning their rights. A plea of guilty or not guilty was demanded at such hearing and the Court did not inquire whether the accused had or wanted counsel or caution them that they need not plead or speak. There was no evidence of force or constraint beyond that involved in asking them to plead and receiving their responses without advice or caution. The record did not show that the defendants knew their rights. Neither was there any specific denial that they had such knowledge. In reversing the judgment, the Court said (on page 277) that the fairer practice would be to advise the accused in all cases, before permitting him to speak even as a volunteer, of his right to counsel and warn him that he need not speak and, if he does, it is at his peril. This would assure fairness to the accused and foreclose the possibility that he might act in ignorance. This privilege against self-incrimination, said the Court, stands guard "at any stage of the proceedings, preliminary or otherwise." (at page 279).

In obtaining the statement from the appellant in the instant case, the Investigating Officer of the Immigration and Naturalization Service failed to advise the defendant that he need not speak or make any statement or to advise him of his right to consult counsel before making any statement. This violated the provision of the Fifth Amendment of the Constitution of the United States against self-incrimination. The statement was therefore inadmissible in evidence at the preliminary hearing before the United States Commissioner.

This Court has condemned confessions obtained under such circumstances, apart from the question of the violation of the Fifth Amendment of the Constitution of the United

States. *McNabb vs. United States*, 318 U. S. 332. The questioning of the appellant in this case was such a "secret interrogation of persons accused of crime" as was referred to by this Court in the McNabb case and in *Upshaw vs. United States*, 335 U.S. 410, 412, 413. When such statements are usually obtained, no one, including counsel, is permitted by the Immigration authorities to confer with the accused (R. 16a). This creates an atmosphere of absolute isolation from the outside world and it was under such surroundings that the statement was obtained from the appellant. If the Immigration authorities desired to accuse the appellant of any crime, it was their duty to immediately and without delay bring the appellant before a United States Commissioner where he could be formally arraigned. This was not done.

In the case at bar, the lower Court relied upon *Mitchell vs. United States*, supra. However, the facts in this case are totally different from those in the Mitchell case. In the Mitchell case, the defendant promptly and spontaneously admitted his guilt within a few minutes after his arrival at the police station. Although the defendant was illegally held eight days, his confessions were found to have been made before any illegal detention had occurred. In commenting on the Mitchell case, this Court said in *Upshaw vs. United States*, supra, (page 413):

> "Thus the holding in the Mitchell case was only that Mitchell's subsequent illegal detention did not render inadmissible his prior confessions. They were held not to involve 'use by the Government of the fruits of wrongdoing by its officers.' The Mitchell case at p. 68, however, reaffirms the McNabb rule that a confession is inadmissible if made during illegal detention due to failure promptly to carry a prisoner before a committing magistrate, whether or not the 'confession is the result of torture, physical or psychological . . .' "

In the instant case, the appellant was arrested under an Immigration warrant and was in custody for two days before the statement was obtained from him. A hearing was held on October 4, 1950 before the Immigration authorities, but no decision has been rendered to date. On the basis of the record, it would appear that the reason for detaining the appellant under the Immigration warrant was suspicion only and was "only to furnish an opportunity for a further interrogation" (*Upshaw v. United States*, supra). While this may be the usual practice by the Immigration and Naturalization Service, this Court held in *Upshaw vs. United States*, supra (p. 414), that a similar practice by police was in violation of the law, and confessions thus obtained were inadmissible under the McNabb rule.

The appellant should have been advised of his right to counsel and of his right to decline to make any statement, as was done by the Federal Bureau of Investigation Agent in *Iva Ikuko Toguri D'Aquino vs. United States*, 192 F. 2d 338, 355. Having admittedly failed to observe this cautionary warning, the statement obtained from the appellant by the Immigration Officer was clearly inadmissible.

The instant case, whether viewed in the light of the McNabb rule, or as a violation of the Fifth Amendment in that the appellant was compelled to give incriminatory evidence against himself, involves a practice uniformly followed by a Government Agency which should be strongly condemned.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Harry Polikoff,
Counsel for Petitioner.

Jacob J. Kilimnik,
Of Counsel.

January 26, 1952.

APPENDIX A.

FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U. S. CODE, TITLE 8, §180-a:

"Any alien who after March 4, 1929, enters the United States at any time or place other than as designated by Immigration Officials or eludes examination or inspection by Immigration Officials, or obtains entry to the United States by a wilfully false or misleading representation or the willful concealment of a material fact, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for not more than one year or by a fine of not more than $1,000 or by both such and imprisonment." (Mar. 4, 1929, Ch. 690, #2, 45 Stat. 1551).